

DUANE MORRIS LLP
Hyman L. Schaffer
Fran M. Jacobs
Gregory P. Gulia
Brian Damiano
1540 Broadway
New York, New York 10036
(212) 692-1000
Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SOFTWARE AG, INC. and SOFTWARE AG, :
Plaintiffs, : 08 CV 00389 (CM) (FM)
-against- :
CONSIST SOFTWARE SOLUTIONS, INC., :
f/k/a CONSIST INTERNATIONAL, INC. :
and NATALIO FRIDMAN, :
Defendants. :
-----X

**DECLARATION OF
MICHAEL A. TURSCHMANN
IN OPPOSITION TO
MOTION FOR SANCTIONS**

MICHAEL A. TURSCHMANN declares:

1. I am an attorney associated with the law firm of Duane Morris LLP, attorneys for defendants Consist Software Solutions, Inc. f/k/a Consist International, Inc. ("Consist") and Natalio Fridman ("Fridman") in the above-captioned action. I submit this Declaration in opposition to Plaintiffs' motion for sanctions pursuant to Rule 37 of the Federal Rules of Civil Procedure.

2. The purpose of this Declaration is to describe the enormous efforts that Defendants undertook to comply with the document requests that Plaintiffs claimed were of the highest priority for their motion for preliminary injunction.

3. On January 18, 2008, only two days after Software AG served its First Request, Consist began producing responsive documents. A true and correct copy of a letter from Michael A. Turschmann to James D. Jacobs dated January 18, 2008 is annexed hereto as Exhibit A. In that letter, Consist produced the trademark registrations for the ADABAS and NATURAL marks that Consist had registered in Brazil – and the documents most pertinent to Plaintiffs' Preliminary Injunction application. In addition, Consist advised that documents previously produced in the prior filed action, *Consist Software Solutions, Inc. et. al. v. Software AG, Inc. et al.*, Docket No. 07 Civ. 7047 (CM)(FM) (S.D.N.Y), were responsive to Plaintiffs' First Request and would be produced.

4. Additional documents were produced over the Martin Luther King, Jr. holiday weekend. At no point did Consist state or imply that this initial production of the ADABAS and NATURAL trademark registrations represented Consist's entire document production, or that no trademarks had been registered in other countries.

5. Over the next few days, Consist identified and reviewed thousands of pages of documents – mostly obtained from outside the United States – over the holiday weekend, and in fact produced over 2,000 pages of documents starting on the evening of Sunday, January 20, 2008.

6. The effort to produce the Brazilian maintenance contracts required extensive coordination of efforts between counsel, Consist, and Consist Brazil. I am informed and believe that the entire contract department of Consist Brazil – except for one employee (the father of the groom) – had to forgo attendance at a wedding on January 19, 2008 in order to review all of Consist's contracts by hand – Consist Brazil apparently does not maintain electronic copies of its contracts – and locate the maintenance contracts responsive to Plaintiffs' document requests.

7. In addition to the enormous efforts to identify and collect documents in Brazil, I was one of several attorneys in New York who were working over the holiday weekend reviewing the documents and arranging for their production to Plaintiffs.

8. At 6:30 P.M. on Sunday, January 20, 2008, we advised Plaintiffs that Consist's second document production was in the process of being copied by our document vendor and would be delivered to counsel's offices as soon as possible. A true and correct copy of an e-mail from Brian Damiano to counsel for Plaintiffs is annexed hereto as Exhibit B.

9. Since Plaintiffs did not have anyone available to accept documents after 7:00 P.M., Consist made its second production of documents, consisting of approximately 1300 pages on the morning of January 21, 2008.

10. On January 22, 2008, Consist made two additional supplemental productions of documents to Plaintiffs. The first of those productions, made in the afternoon, included unredacted versions of the maintenance contracts between Consist Brazil and its customers – documents that Plaintiffs had stressed they needed for the Preliminary Injunction hearing. A true and correct copy of a letter from Michael A. Turschmann to James D. Jacobs dated January 22, 2008 is annexed hereto as Exhibit C. The second production was made via e-mail to Plaintiffs at 11:20 P.M. and contained additional contracts, and corporate documents that were requested in Plaintiffs' Second Request. A true and correct copy of an e-mail from Michael A. Turschmann to Plaintiffs' counsel is annexed hereto as Exhibit D. The letter and e-mails indicated that Consist would continue to produce documents on a rolling basis.

11. On January 23, 2008, Consist was continuing its search for and review of documents (all while depositions were continuing). Consist made two additional supplemental productions on that date. True and correct copies of e-mails from Michael A. Turschmann to

Plaintiffs' counsel dated January 23, 2008 at 8:08P.M. and 9:51P.M. are annexed hereto as Exhibits E and F. These productions included license agreements between Consist and its affiliates and additional Brazilian maintenance contracts.

12. Between January 16 and January 23, we did our best to gather and review maintenance contracts and other relevant documents from Brazil. Our efforts were concentrated on Brazil because that was the focus of Software AG's preliminary injunction motion. Brazil is, moreover, the only South American country that Software AG even mentions in its complaint.

13. Gathering the maintenance contracts from Brazil was extremely time-consuming and difficult. No contracts were located in the United States. The contracts were all in Portuguese, and the materials we received from Brazil included some contracts which had nothing to do with Software AG or its products. All of these documents required review for privilege and for commercially sensitive information. We did our best to provide Plaintiffs – in a very short period of time – with those documents that they advised us were most important to them and most relevant to the issues raised by the Preliminary Injunction motion.

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct to the best of my knowledge information and belief.

Dated: New York, New York
February 27, 2008


Michael A. Turschmann

A

Duane Morris®*FIRM and AFFILIATE OFFICES*

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January 18, 2008

Via Email

James D. Jacobs
 Baker & McKenzie
 1114 Avenue of the Americas
 New York, NY 10036

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 NEWARK
 WILMINGTON
 PRINCETON
 LAKE TAHOE
 HO CHI MINH CITY

Re: Software AG, Inc. et al. v. Consist Software Solutions (08 Civ. 0389) (CM)

Dear Jim:

Attached please find documents numbered CSS2-00001 - CSS2-00005 which Consist Software Solutions ("Consist") is producing in response to Plaintiffs' First Request for Production of Documents. As set forth in the correspondence from Hyman Schaffer earlier this afternoon, Consist has previously produced documents which are responsive to Plaintiffs' document requests in the previously filed action entitled *Consist Software Solutions, Inc. v. Software AG, Inc. et al.*, Docket No. 07 Civ. 7047. (CM)(FM), U.S.D.C. S.D.N.Y. Consist will consent to the amendment of the confidentiality order entered into in the prior litigation to permit SAG to use pertinent documents in this litigation.

Please call me if you have any questions concerning the production.

Sincerely,



Michael A. Turschmann

Enclosures

MAT

cc: Hyman Schaffer, Esq.
 Fran Jacobs, Esq.
 Brian Damiano, Esq.

B

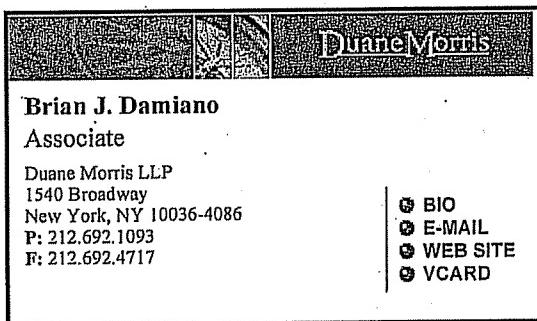
From: Damiano, Brian J..
Sent: Sunday, January 20, 2008 6:30 PM
To: Jacobs, James D.; 'Gasparo, Frank M'; 'Ballard, Marcella'; Basinger, John A.
Cc: Schaffer, Hyman L.; Jacobs, Fran M.; Turschmann, Michael A.
Subject: SAG v. Consist - Defendants' Document Production

Counsel,

Our second document production is being copied right now by our vendor, for delivery to your offices ASAP. We're addressing the delivery to all four of you, but given the weekend and holiday I want to make sure that your building is not going to reject an after hours delivery.

If the vendor should call upstairs to one of your direct lines, please let me or Mike Turschmann know. Thanks.

Brian



C

Duane Morris®**FIRM and AFFILIATE OFFICES**

MICHAEL A. TURSCHMANN
 DIRECT DIAL: 212.692.1043
 E-MAIL: MATurschmann@duanemorris.com

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January 22, 2008

Via Hand Delivery and E-Mail

James D. Jacobs
 Baker & McKenzie
 1114 Avenue of the Americas
 New York, NY 10036

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 WILMINGTON
 PRINCETON
 LAKE TAHOE
 HO CHI MINH CITY

Re: Software AG, Inc. et al. v. Consist Software Solutions (08 Civ. 0389) (CM)

Dear Jim:

As a further supplement to Consist Software Solutions response to Software AG's First and Second Requests for Production of Documents, enclosed please find documents bates numbered CSS2-01305 – CSS2-01532.

This supplemental production includes the unredacted versions of the contracts which were provided to you yesterday in the production bearing bates numbers CSS2-00006 – CCS2-01304. As per Hyman Schaffer's e-mail correspondence to you this afternoon, Consist regards the pricing information within these agreements to be highly confidential and commercially sensitive business information. Accordingly, the documents have been marked **Attorneys' Eyes Only**, and we fully expect that you will prevent disclosure of the pricing information and customer identities to Software AG or its affiliates, unless and until the Court directs otherwise.

Consist continues to object the scope of SAG's document requests as set forth in Consist's responses and objections and the production of the enclosed is without prejudice to the objections contained therein. Moreover, Consist objects to the production of the pricing information within these documents as completely irrelevant to the issues before the Court and reserves its right to seek return of the documents and the information contained therein.

As previously advised, the contracts sought by your document requests are not located in New York, nor for that matter within the United States. We are continuing our search for documents responsive to your requests and are acting as quickly as possible under the circumstances. We can report that we received from Brazil additional documents in redacted form. These documents have been sent to our vendor for production, but must be reviewed prior to disclosure to SAG. Despite the accelerated discovery schedule, we nonetheless have ethical obligations to

Duane Morris

James D. Jacobs
January 22, 2008
Page 2

ensure proper disclosure of relevant non-privileged material. Therefore, we will produce these additional documents as soon as is reasonably possible.

Unfortunately, the redaction of these documents was conducted in Brazil prior to forwarding the documents to the United States. We have requested unredacted documents and will supplement Consist's production on a rolling basis upon receipt and review of same.

Please call me if you have any questions concerning the production.

Sincerely,


Michael A. Turschmann

Enclosures (via hand delivery)

MAT

cc: Hyman Schaffer, Esq.
Fran Jacobs, Esq.
Brian Damiano, Esq.

D

From: Turschmann, Michael A.
Sent: Tuesday, January 22, 2008 11:20 PM
To: 'Jacobs, James D.'; 'Gasparo, Frank M'; 'Ballard, Marcella'; 'Basinger, John A.'
Cc: Schaffer, Hyman L.; Jacobs, Fran M.; Damiano, Brian J.; McQuillen, Brian; Giulia, Gregory P.; Chavez, Jr., Javier
Subject: SAG v. Consist - Consist Supplemental Production
Attachments: consist supp production.pdf

Counsel:

Attached please find Consist's supplemental document production, bearing bates numbers CSS2-06433 - CSS2-06470. These documents are in further response of SAG's First and Second Requests for Production of Documents. We are continuing our review of documents and will produce additional documents on a rolling basis.

Please call me if you have any questions.

-Michael

Michael A. Turschmann

Associate

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New York, NY 10036-4086
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MATurschmann@duanemorris.com
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E

From: Turschmann, Michael A.
Sent: Wednesday, January 23, 2008 8:08 PM
To: 'Jacobs, James D.'; 'Gasparo, Frank M'; 'Ballard, Marcella'; 'Basinger, John A.'
Cc: Schaffer, Hyman L.; Jacobs, Fran M.; Damiano, Brian J.; McQuillen, Brian; Giulia, Gregory P.; Chavez, Jr., Javier
Subject: SAG v. Consist - Consist Supplemental Production.
Attachments: consist 1-23-07 production.pdf

Counsel:

Attached please find Consist's supplemental document production, bearing bates numbers CSS2-06471 - CSS2-06482. These documents are in further response of SAG's First and Second Requests for Production of Documents. We are continuing our review of documents and will produce additional documents on a rolling basis.

Please call me if you have any questions.

-Michael

Michael A. Turschmann
Associate

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F

From: Turschmann, Michael A.
Sent: Wednesday, January 23, 2008 9:51 PM
To: Jacobs, James D.; 'Basinger, John A.'; Ballard, Marcella; Gasparo, Frank M
Cc: Schaffer, Hyman L.; Jacobs, Fran M.; McQuillen, Brian; Gulia, Gregory P.; Damiano, Brian J.; Chavez, Jr., Javier
Subject: SAG v. Consist - Consist Supplemental Production
Attachments: SDOC1960.pdf; SDOC1961.pdf; SDOC1962.pdf

Counsel:

As a further supplement to Consist's document production, attached please documents bearing bates numbers CSS2-01533 - CSS2-01779. These documents are in further response to SAG's First and Second Requests for Production of Documents. Please note the attached documents are all marked ATTORNEYS' EYES ONLY and should be treated as highly confidential. We are continuing our review of documents and will produce additional documents on a rolling basis.

Please call me if you have any questions.

-Michael

Michael A. Turschmann

Associate

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